

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:LM:MCT:NEW:TL-N-4238-00  
CConnell

date: November 9, 2000

to: Nicholas Filannino  
Team Manager, Group 1142

from: Associate Area Counsel, LMSB, Group 1

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subject: Form 872-P for [REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

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DISCUSSION

The Examination Division requested our assistance in preparing a Form 872-P for the above TEFRA partnership, which was dissolved in [REDACTED]. Because the tax matters partner is not changed by the dissolution of the partnership, we recommend that you solicit Forms 872-P in the same format as prepared previously. The basis for our advice is set forth below.

Facts

We understand the following to be the facts in this case. If our statement of facts is incorrect or if additional facts are

developed, our opinion on this matter may change. These facts are based in part upon the memorandum from Frank Attianesi dated July 17, 2000.

[REDACTED] (" [REDACTED] ") is a TEFRA partnership under audit for the years ended [REDACTED] through [REDACTED]. [REDACTED] is a French partnership, but files tax returns in the United States. [REDACTED] (" [REDACTED] ") is a C corporation that owns [REDACTED] % of [REDACTED] and acts as the tax matters partner ("TMP") of [REDACTED]. [REDACTED] owns [REDACTED] % of [REDACTED].

[REDACTED] is part of a consolidated group in which [REDACTED] (" [REDACTED] ") is the common parent. [REDACTED] owns [REDACTED] % of [REDACTED].

In [REDACTED], [REDACTED] dissolved, making a liquidating distribution to [REDACTED]. However, the audit of [REDACTED] is on going.

Previously, the Service secured Forms 872-P for the years [REDACTED] through [REDACTED]. (Copies attached). In those Forms 872-P, under "tax matters partner sign here" "[REDACTED]" is typed. Under "Authorized Person" is typed "[REDACTED]", Parent of [REDACTED]. The vice president of finance of [REDACTED] signed the Form. We understand that the agent believes that the vice president of finance of [REDACTED] has represented that he is authorized to sign the Form.

### Analysis

You have requested our advice on preparing another Form 872-P to extend the statute of limitations to [REDACTED]. Your main concern in preparing the subsequent Form 872-P is that the partnership has dissolved.

We note that the preparation of extension forms where a corporate taxpayer has dissolved often causes concern because the taxpayer no longer exists. Therefore, it is often recommended that the Service secure both Forms 872 (extension of statute from the taxpayer) and 977 (extension of statute from the transferee) from the entity that received the liquidating distribution. See I.R.M. 4582.21.

In the partnership context, while the partnership files an information return, the partnership is not the taxpayer. The individual partners declare their share of the partnership income and are liable for the taxes on this income. If the partnership dissolves, the entity that receives the distribution is not a

transferee, but the taxpayer.

Further, the dissolution of the partnership in a subsequent taxable year does not impact the TMP status of the partner for a prior year. The original TMP (assuming his status has not otherwise been changed) may continue to sign the Form 872-P.

While your memorandum does not ask for our opinion concerning who should sign the Form 872-P, it is not clear whether [REDACTED] should sign the Form 872-P or [REDACTED]. Under Treas. Reg. § 1.1502-77(a), a common parent is normally "the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return."

The problem here is that the TMP (in this case a subsidiary) signs the Form 872-P on behalf of the partnership, not the consolidated group. While some of the taxable income of the partnership will flow through to [REDACTED], it is not clear that extending the TEFRA statute of limitations is a matter related to the tax liability of [REDACTED]'s consolidated return.

If this had been the first Form 872-P related to [REDACTED]'s [REDACTED] tax returns, we would have recommended that both [REDACTED] and [REDACTED] sign the Form 872-P so the question of Treas. Reg. § 1.1502-77(a) application to TEFRA partnerships is made moot. Since the original Form 872-P only contains [REDACTED]'s signature, it would be pointless to insist on both signatures now. We believe the Form 872-P as originally signed is at least defensible under Treas. Reg. § 1.1502-77(a). Accordingly, we recommend that you prepare the Form 872-P in the same manner in which it was previously prepared.

If you have any questions, contact Attorney Craig Connell at 973-645-2592. This advice is subject to National Office ten day post review.

Area Counsel

By:                     /s/                      
WILLIAM F. HALLEY  
Associate Area Counsel (LMSB)

cc: Territory Manager